

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1447 be amended to read as follows:

- 1 Page 84, between lines 4 and 5, begin a new paragraph and insert:
- 2 "SECTION 62. IC 6-2.5-2.5 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2010]:
- 5 **Chapter 2.5. Reduced Sales and Use Tax Rate**
- 6 **Sec. 1. (a) This chapter does not apply if the language that was**
- 7 **proposed and agreed to by the one hundred fifteenth general**
- 8 **assembly in P.L.147-2008 (SJR 1-2008) is agreed to by the one**
- 9 **hundred sixteenth general assembly before November 3, 2010.**
- 10 **Otherwise, this chapter applies beginning January 1, 2011.**
- 11 **(b) The following sections do not apply if this chapter applies:**
- 12 **IC 6-2.5-2-2**
- 13 **IC 6-2.5-6-7**
- 14 **IC 6-2.5-6-8**
- 15 **IC 6-2.5-6-10**
- 16 **IC 6-2.5-7-3**
- 17 **IC 6-2.5-7-5**
- 18 **IC 6-2.5-10-1.**
- 19 **Sec. 2. (a) The state gross retail tax is measured by the gross**
- 20 **retail income received by a retail merchant in a retail unitary**
- 21 **transaction and is imposed at the following rates:**
- 22 **STATE GROSS RETAIL INCOME**
- 23 **GROSS FROM THE**
- 24 **RETAIL RETAIL UNITARY**

	TAX	TRANSACTION
1		
2	\$ 0	less than \$0.09
3	\$ 0.01	at least \$ 0.09 but less than \$0.25
4	\$ 0.02	at least \$ 0.25 but less than \$0.42
5	\$ 0.03	at least \$ 0.42 but less than \$0.59
6	\$ 0.04	at least \$ 0.59 but less than \$0.75
7	\$ 0.05	at least \$ 0.75 but less than \$0.92
8	\$ 0.06	at least \$ 0.92 but less than \$1.09
9	On a retail unitary transaction in which the gross retail income	
10	received by the retail merchant is one dollar and nine cents (\$1.09)	
11	or more, the state gross retail tax is six percent (6%) of that gross	
12	retail income.	
13	(b) If the tax computed under subsection (a) results in a fraction	
14	of one-half cent (\$0.005) or more, the amount of the tax shall be	
15	rounded to the next additional cent.	
16	Sec. 3. Except as otherwise provided in IC 6-2.5-6 or IC 6-2.5-7,	
17	a retail merchant shall pay to the department, for a particular	
18	reporting period, an amount equal to the product of:	
19	(1) six percent (6%); multiplied by	
20	(2) the retail merchant's total gross retail income from taxable	
21	transactions made during the reporting period.	
22	The amount determined under this section is the retail merchant's	
23	state gross retail and use tax liability regardless of the amount of	
24	tax the retail merchant actually collects.	
25	Sec. 4. (a) For purposes of determining the amount of state gross	
26	retail and use taxes which a retail merchant must remit under	
27	section 3 of this chapter, the retail merchant may exclude from the	
28	retail merchant's gross retail income from retail transactions made	
29	during a particular reporting period an amount equal to the	
30	product of:	
31	(1) the amount of that gross retail income; multiplied by	
32	(2) the retail merchant's "income exclusion ratio" for the tax	
33	year which contains the reporting period.	
34	(b) A retail merchant's "income exclusion ratio" for a	
35	particular tax year equals a fraction, the numerator of which is the	
36	retail merchant's estimated total gross retail income for the tax	
37	year from unitary retail transactions that produce gross retail	
38	income of less than nine cents (\$0.09) each, and the denominator of	
39	which is the retail merchant's estimated total gross retail income	
40	for the tax year from all retail transactions.	
41	(c) To minimize a retail merchant's record keeping	
42	requirements, the department shall prescribe a procedure for	
43	determining the retail merchant's income exclusion ratio for a tax	
44	year, based on a period, not to exceed fifteen (15) consecutive days,	
45	during the first quarter of the retail merchant's tax year. However,	
46	the period may be changed if the change is requested by the retail	
47	merchant because of the retail merchant's peculiar accounting	

procedures or marketing factors. In addition, if a retail merchant has multiple sales locations or diverse types of sales, the department shall permit the retail merchant to determine the ratio on the basis of a representative sampling of the locations and types of sales.

Sec. 5. (a) To compensate retail merchants for collecting and timely remitting the state gross retail tax and the state use tax, every retail merchant, except a retail merchant referred to in subsection (c), is entitled to deduct and retain from the amount of those taxes otherwise required to be remitted under this chapter, if timely remitted, a retail merchant's collection allowance.

(b) The allowance equals a percentage of the retail merchant's state gross retail and use tax liability accrued during a calendar year, specified as follows:

(1) Eighty-three hundredths percent (0.83%), if the retail merchant's state gross retail and use tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year did not exceed sixty thousand dollars (\$60,000).

(2) Six-tenths percent (0.6%), if the retail merchant's state gross retail and use tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year:

(A) was greater than sixty thousand dollars (\$60,000); and

(B) did not exceed six hundred thousand dollars (\$600,000).

(3) Three-tenths percent (0.3%), if the retail merchant's state gross retail and use tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year was greater than six hundred thousand dollars (\$600,000).

(c) A retail merchant described in IC 6-2.5-4-5 or IC 6-2.5-4-6 is not entitled to the allowance provided by this section.

Sec. 6. (a) With respect to the sale of gasoline that is dispensed from a metered pump, a retail merchant shall collect, for each unit of gasoline sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$0.001), of:

(1) the price per unit before the addition of state and federal taxes; multiplied by

(2) six percent (6%).

The retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

(b) With respect to the sale of special fuel or kerosene that is dispensed from a metered pump, unless the purchaser provides an exemption certificate in accordance with IC 6-2.5-8-8, a retail merchant shall collect, for each unit of special fuel or kerosene sold, state gross retail tax in an amount equal to the product,

rounded to the nearest one-tenth of one cent (\$0.001), of:

- (1) the price per unit before the addition of state and federal taxes; multiplied by
- (2) six percent (6%).

Unless the exemption certificate is provided, the retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

Sec. 7. (a) Each retail merchant who dispenses gasoline or special fuel from a metered pump shall, in the manner prescribed in IC 6-2.5-6, report to the department the following information:

- (1) The total number of gallons of gasoline sold from a metered pump during the period covered by the report.
- (2) The total amount of money received from the sale of gasoline described in subdivision (1) during the period covered by the report.
- (3) The part of the amount described in subdivision (2) that represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.
- (4) The total number of gallons of special fuel sold from a metered pump during the period covered by the report.
- (5) The total amount of money received from the sale of special fuel during the period covered by the report.
- (6) The part of the amount described in subdivision (5) that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.
- (7) The total number of gallons of E85 sold from a metered pump during the period covered by the report.

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount that equals five and sixty-six hundredths percent (5.66%) of the gross receipts, including state gross retail taxes but excluding Indiana and federal gasoline and special fuel taxes, received by the retail merchant from the sale of the gasoline and special fuel that is covered by the report and on which the retail merchant was required to collect state gross retail tax. The retail merchant shall remit that amount regardless of the amount of state gross retail tax that the merchant has actually collected under this chapter. However, the retail merchant is entitled to deduct and retain the amounts prescribed in subsection (c), section 5 of this chapter, and IC 6-2.5-6-11.

(c) A retail merchant is entitled to deduct from the amount of state gross retail tax required to be remitted under subsection (b) the amount determined under STEP THREE of the following formula:

STEP ONE: Determine:

- (A) the sum of the prepayment amounts made during the period covered by the retail merchant's report; minus
- (B) the sum of prepayment amounts collected by the retail

1 merchant, in the merchant's capacity as a qualified
 2 distributor, during the period covered by the retail
 3 merchant's report.

4 **STEP TWO:** Subject to subsection (d), for reporting periods
 5 ending before July 1, 2020, determine the product of:

- 6 (A) eighteen cents (\$0.18); multiplied by
- 7 (B) the number of gallons of E85 sold at retail by the retail
 8 merchant during the period covered by the retail
 9 merchant's report.

10 **STEP THREE:** Add the amounts determined under STEPS
 11 ONE and TWO.

12 For purposes of this section, a prepayment of the gross retail tax is
 13 presumed to occur on the date on which it is invoiced.

14 (d) The total amount of deductions allowed under subsection (c)
 15 STEP TWO may not exceed one million dollars (\$1,000,000) for all
 16 retail merchants in all reporting periods. A retail merchant is not
 17 required to apply for an allocation of deductions under subsection
 18 (c) STEP TWO. If the department determines that the sum of:

- 19 (1) the deductions that would otherwise be reported under
 20 subsection (c) STEP TWO for a reporting period; plus
- 21 (2) the total amount of deductions granted under subsection
 22 (c) STEP TWO in all preceding reporting periods;

23 will exceed one million dollars (\$1,000,000), the department shall
 24 publish in the Indiana Register a notice that the deduction
 25 program under subsection (c) STEP TWO is terminated after the
 26 date specified in the notice and that no additional deductions will
 27 be granted for retail transactions occurring after the date specified
 28 in the notice.

29 **Sec. 8. (a)** The department shall account for all state gross retail
 30 and use taxes that it collects.

31 (b) The department shall deposit those collections in the
 32 following manner:

- 33 (1) Ninety-nine and sixty-seven thousandths percent
 34 (99.067%) of the collections shall be paid into the state
 35 general fund.
- 36 (2) Seventy-six hundredths of one percent (0.76%) of the
 37 collections shall be paid into the public mass transportation
 38 fund established by IC 8-23-3-8.
- 39 (3) Thirty-three thousandths of one percent (0.033%) of the
 40 collections shall be deposited into the industrial rail service
 41 fund established by IC 8-3-1.7-2.
- 42 (4) Fourteen-hundredths of one percent (0.14%) of the
 43 collections shall be deposited into the commuter rail service
 44 fund established by IC 8-3-1.5-20.5.

45 **Sec. 9. (a)** For purposes of this chapter, all transactions, except
 46 the furnishing of public utility, telephone, or cable television
 47 services and commodities by retail merchants described in

1 IC 6-2.5-4-5, IC 6-2.5-4-6, and IC 6-2.5-4-11 shall be considered as
2 having occurred after December 31, 2010, to the extent that
3 delivery of the property or services constituting selling at retail is
4 made after that date to the purchaser or to the place of delivery
5 designated by the purchaser. However, a transaction shall be
6 considered as having occurred before January 1, 2011, to the
7 extent that the agreement of the parties to the transaction is
8 entered into before January 1, 2011, and payment for the property
9 or services furnished in the transaction is made before January 1,
10 2011, notwithstanding the delivery of the property or services after
11 December 31, 2010.

12 (b) With respect to a transaction constituting the furnishing of
13 public utility, telephone, or cable television services and
14 commodities, only transactions for which the charges are collected
15 on original statements and billings dated after December 31, 2010,
16 shall be considered as having occurred after December 31, 2010.".

17 Renumber all SECTIONS consecutively.

(Reference is to HB 1447 as printed February 20, 2009.)

Representative Walorski